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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SolarCity Corporation,

Plaintiff,

vs.

Salt River Project Agricultural
Improvement and Power District,

Defendant.

Civil No.

**COMPLAINT FOR ANTITRUST
VIOLATIONS AND BUSINESS
TORTS**

DEMAND FOR JURY TRIAL

SolarCity Corporation (“SolarCity”), through its undersigned attorneys at Boies, Schiller & Flexner LLP, alleges as follows, based on knowledge as to its own actions and status, and upon information and belief as to all other facts.

INTRODUCTION

1. This case arises from Defendant Salt River Project Agricultural Improvement and Power District (“SRP”)’s unlawful efforts to preserve its existing monopoly over the retail provision of electric power for consumers and businesses. Through this complaint, SolarCity seeks relief under the federal and state antitrust laws, as well as the common law, from SRP’s anticompetitive and tortious conduct designed to eliminate solar competition, including competition from SolarCity.

2. SRP is a monopolist. In the territory it serves, it has monopoly power over the electrical grid, and it has monopoly power over the delivery and sale of electricity to retail customers.

3. SolarCity sells and leases rooftop solar energy systems to residential and business customers.¹ By buying or leasing solar energy systems, SolarCity customers are able to generate their own electricity on their own property. That reduces the amount of electricity that customers need to buy from SRP, allows customers to save money, and conserves natural resources.

4. SRP has a simple strategy to destroy the competitive threat from SolarCity and other competitors: under SRP’s newly introduced pricing plans (called “Standard Electric Price Plans” [“SEPPs”]), customers who choose to obtain some of their own power from solar energy systems must pay a substantial penalty to SRP. Because solar customers are unable to completely disconnect from SRP’s grid—they still need power in the evening hours and at other times when their energy demands exceed what their solar energy systems produce—they cannot escape SRP’s penalty.

¹ These rooftop solar energy systems are sometimes referred to as “distributed solar,” as distinguished from centralized, utility-scale solar power plants.

1 5. The penalty is so significant that it eliminates the economic value to
2 customers of generating their own power. The new plan penalizes what SRP describes as
3 the “typical solar customer” by about ***\$600 per year*** for installing solar as compared to
4 SRP’s longstanding prior plans, thereby increasing a new distributed solar customer’s SRP
5 bill by approximately ***65%*** compared to the previous plan. At the same time, SRP has
6 adopted an average 3.9% increase for residential customers who keep purchasing all their
7 power from SRP. Flexing its monopoly power, SRP has not adopted a price *decrease* for
8 any customer.

9 6. SRP’s own internal analyses establish that, with the new plan, a residential
10 customer who wants to install distributed solar would simultaneously have to cut his or
11 her peak electricity usage and demand by ***60%*** just to keep payments to SRP comparable
12 to what those payments would have been under the previous SRP rate plan that applied to
13 distributed solar customers.

14 7. Customers recognize that SRP’s new pricing plan leaves them with no
15 choice: after the effective date of SRP’s new plan, applications for distributed solar
16 energy systems in SRP territory fell by ***96%***. Numerous potential solar customers have
17 submitted complaints to SRP that corroborate that the new plan completely eliminates
18 their ability and incentive to install solar systems.

19 8. SRP’s penalty on solar customers is not justified by the costs SRP incurs to
20 serve customers who use distributed solar. To the contrary, solar energy systems confer
21 substantial benefits to the grid and to SRP itself that offset or reduce the cost of service for
22 customers with solar energy systems. For years, SRP has explicitly recognized these
23 benefits by spending tens of millions of dollars in incentives to encourage its customers to
24 buy and lease solar energy systems for their homes and businesses.

25 9. In the space of just over two years, however, SRP has gone from providing
26 monetary *incentives* averaging approximately \$4,000 per customer to promote the
27 installation of distributed solar systems to imposing monetary *penalties* on such
28

1 installations, to the tune of \$12,000 over the usual 20-year amortization period of installed
2 systems. There is no reasonable basis for such an unprecedented and dramatic reversal.

3 10. The SEPPs place no similar penalties on any of the numerous other
4 categories of SRP customers who have similar characteristics with respect to their use of
5 the SRP grid, including customers who make relatively low or reduced electricity
6 purchases from SRP for other reasons, such as those with high energy efficiency or
7 seasonal residents, as well as customers who purchase solar power from the solar power
8 plants with which SRP has contracts. The penalties correspond to only one thing: whether
9 customers provide any of their own power instead of buying all of their power—including
10 solar-generated power—from SRP.

11 11. Nor do the penalties imposed by the SEPPs correspond to any unique
12 characteristics of distributed solar systems. Indeed, the penalties apply to all methods of
13 self-generation—in other words, obtaining any electricity from sources other than SRP—
14 regardless of whether they share the same cost and demand characteristics. The SEPPs
15 are explicit that their penalties will likewise apply to “other technologies such as battery
16 storage or fuel cells [which] may be viable in the future”—completely without regard to
17 any actual impact of such technologies on SRP’s cost recovery.

18 12. SRP’s new self-generation price plans manifestly exclude competition and
19 unlawfully maintain SRP’s monopoly over the retail sale of electricity in SRP territory.
20 SRP unlawfully uses its position as the only available supplier of certain power (for
21 example, the portion of electricity usage at times when the sun does not shine) to eliminate
22 the ability of distributed-solar providers to compete for the substantial portion of SRP
23 customers’ retail power requirements that can be cost-effectively served by distributed
24 solar. Through the SEPPs, SRP effectively requires customers who must buy *any* of their
25 electricity from SRP (which is all or virtually all customers) to do so on terms that
26 effectively require those customers to buy *all* of their power from SRP. This prevents
27 customers from taking advantage of distributed solar when it is more efficient, lower cost,
28 and far better for the environment.

1 SRP has its origins in the Salt River Valley Water Users' Association (the "Association"),
2 a private corporation formed by Salt River Valley landowners to enter into contracts with
3 the federal government for the irrigation of their land.

4 21. SRP was created for the purpose of refinancing the Association's debts by
5 issuing interest-free bonds, thereby saving the private landowners very large sums of
6 money each year. The Association's responsibilities were divided between SRP and the
7 Association, with SRP taking over the power and water storage work, and the Association
8 managing water delivery as an agent of SRP.

9 22. SRP and the Association continue to operate as alter egos, with SRP using
10 its profits from its electric operations to subsidize the Association's water. SRP admits
11 that its own accounting reveals over \$100 million in profit from electricity operations over
12 the last year. SRP shifts much of that surplus to subsidize the Association's water
13 customers.

14 23. Today, SRP continues to participate in private markets and serves private
15 economic interests. It engages in the proprietary business of supplying electric power at
16 retail to the ultimate consumer.

17 24. Only real property owners in SRP's District can serve on SRP's Board, and
18 only real property owners in SRP's District are allowed to vote in SRP elections. Their
19 votes are counted in proportion to their land holdings.

20 25. In addition, the right to vote, even for real property owners, is further limited
21 to specific geographic areas within the District. For the most part, these additional
22 restrictions limit voting rights to the lands whose water needs were originally served by
23 the Association in 1903. Consequently, about one-third of SRP's electricity customers
24 have no right to vote in SRP elections.

25 26. This structure encourages SRP to serve the private interests of landowners,
26 particularly large landowners who value cheap water, at the expense of a broad base of
27 electric customers.

28

1 under 28 U.S.C. § 1332 because there is complete diversity between the parties and the
2 matter in controversy exceeds \$75,000 before interest and costs.

3 32. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), and 15
4 U.S.C. §§ 22 and 26, because SRP is a resident of this District and SRP's conduct alleged
5 herein took place, and continues to take place, in this District.

6 33. In addition to the detrimental effects felt in Arizona, SRP's conduct
7 substantially affects interstate commerce in that it harms competition from SolarCity and
8 other out-of-state companies, as well as new entry from out-of-state competitors. For
9 example, many of the distributed-solar companies that do or have recently done business
10 in SRP's service area (SolarCity, Sunrun, SunPower, Sungevity, and Verengo) are based
11 in California.

12 34. SRP's conduct also substantially affects interstate commerce in that SRP
13 relies on interstate commerce by purchasing, delivering and selling electricity on an
14 interstate basis.

15 **RELEVANT MARKETS AND MARKET POWER**

16 35. The relevant geographic market is SRP's service area.

17 36. At a minimum, the relevant product market is the retail provision of electric
18 power for consumers and businesses (hereafter the "retail market"). In this market, power
19 may be provided either by outright sale of power, or by the lease or sale of distributed
20 systems through which a customer generates power on his or her own property.

21 37. SolarCity directly competes with SRP in the retail market because SolarCity
22 offers equipment and services that provide power—specifically solar power—to
23 customers.

24 38. SRP has monopoly power in the retail market within the geographic market,
25 currently providing more than 95% of the electricity used by retail customers in SRP
26 territory.

1 39. Another indicator of SRP's monopoly power is SRP's long-standing ability
2 to extract supra-competitive profits from its electric operations and use them to fund its
3 money-losing water operations.

4 40. In addition, there are high barriers to entry in the retail market, including as
5 a virtue of the need for new providers to interconnect with the SRP grid.

6 41. SRP provides retail electric power through a variety of different plans and
7 sources. For example, for residential customers, SRP provides a standard plan (E-23)
8 under which customers purchase power on a generalized basis for specified per-kilowatt-
9 hour ("kWh") rates and a monthly service charge; a "time-of-use" plan (E-26) under
10 which the per-kWh rates vary by time of day, in addition to the same monthly service
11 charge; a Community Solar plan under which customers purchase power generated by
12 solar power plants at different per-kWh rates and the same monthly service charge; and a
13 variety of other plans, including separate plans for commercial and governmental
14 customers. SRP's Community Solar plan is a particularly close substitute for distributed
15 solar power.

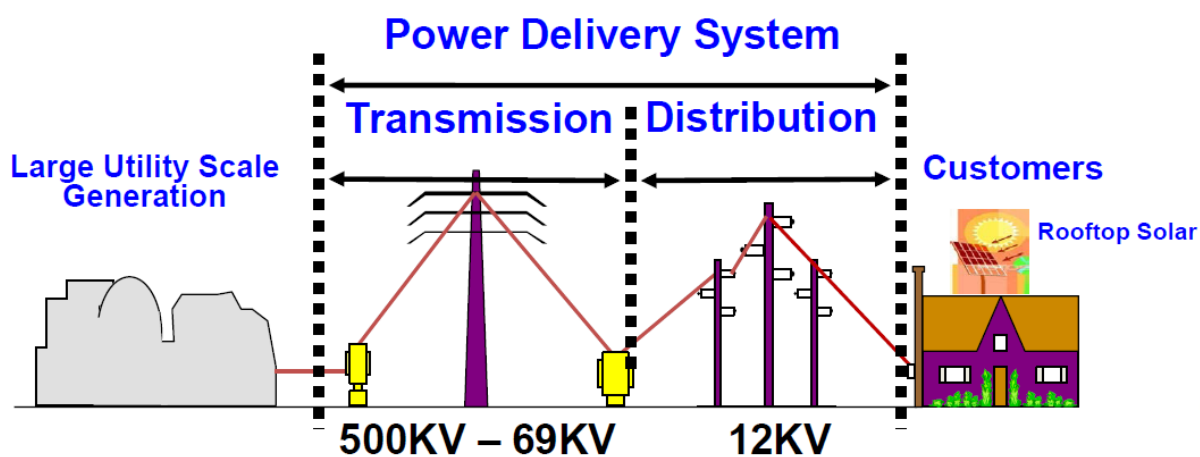
16 42. Other relevant markets exist, either as submarkets within the retail market or
17 as complementary or adjacent markets of their own, such as the market for access to
18 distribution and transmission of power through the electric grid ("grid access market").

19 43. There are high barriers to entry in the grid access market because
20 duplicating the distribution and transmission systems that SRP controls would require
21 massive investment, permitting, construction, and many other hurdles.

22 44. Traditionally, SRP has sold grid access together with the electricity
23 generated by power plants, which were both included in a largely single per-unit (kWh)
24 price based on electricity usage.

25 45. More recently, and particularly with the SEPPs as applied to self-generating
26 customers, SRP has moved to unbundle grid access from power sales. The SRP-created
27 graphic below shows how grid access relates to retail customers:
28

Power Delivery System “The Grid”



46. SRP has monopoly power over grid access within the geographic market.

47. SRP's monopoly power is not the result of any state policy to displace competition in favor of an SRP monopoly or government regulation or supervision of SRP's conduct. Indeed, Arizona state law specifically supports competition in electric service through an "Electric Power Competition Act" under which it is, in theory, possible for other large-scale utilities in Arizona to sell power to SRP customers through SRP's grid access facilities. However, SRP's 2014 Audited Financials explains this theoretical competition has not materialized: "there is no active retail competition within the District's service territory" for that type of service.

48. Whether SRP customers self-generate power (including through distributed solar provided by SolarCity) or not, all or virtually all of them still need to purchase both retail electric power and grid access from SRP to have access power at times that alternative sources of power (such as distributed solar) cannot meet the customers' needs. SRP has monopoly power over these incontestable portions of consumer demand, even while SolarCity and other distributed solar companies try to provide competition for the contestable portion of demand.

GENERAL ALLEGATIONS

Industry Background

49. Distributed solar systems generate electricity when the sun shines on them. Depending on the solar panels' orientation, generation continues for hours and often peaks near mid-day. Distributed solar in Arizona offers peak generation during many of the highest-usage hours and provides clean power for much of the peak-demand period, which reduces demand on the electric grid and mitigates the need for incremental generating and transmission capacity.

50. Distributed solar benefits utilities, including SRP, in many ways, including by, among other things, reducing electric demand, particularly during the electric system's peak hours, when electricity from other sources is available to the utility only at high prices; adding electric capacity, particularly during the electric system's peak hours, when electricity from other sources is available to the utility only at high prices; reducing transmission costs by reducing congestion or allowing utilities to reduce or defer investment in enhancing or adding transmission facilities; reducing the utility's long-term capital needs for investment in power generation capacity; and helping the utility meet environmental or "green" goals or requirements.

SRP's Prior Course of Conduct

51. The benefit of solar generation to SRP is demonstrated by SRP's own decision to make substantial investments in solar power and offer incentives to customers to adopt it. For years, SRP has provided customers incentives—totaling approximately \$150 million—to encourage the installation of distributed solar systems. Moreover, SRP has committed to buy the output from at least three substantial solar facilities and owns at least three facilities outright. Those investments were rational and justified because electricity generated by solar power in or near SRP's service area benefits SRP by meeting demand during peak periods (such as during sunny summer days), reducing costs of generation, providing renewable energy credits ("RECs"), and otherwise.

1 52. SRP has also recognized the benefits of solar in other ways. For example,
2 SRP has for years offered residential and small-to-medium-sized commercial and
3 government customers “net metering,” a system that helps encourage distributed solar in
4 which the utility company offers the customer a bill credit for excess solar production
5 when a customer’s distributed solar system produces more than the customer uses.

6 53. Under net metering, the excess electricity from a distributed generation
7 customer’s solar system is transferred into the grid and purchased at retail rates by the
8 distributed solar customer’s neighbors or others. The distributed solar customer is then
9 billed for its “net” electricity use (*i.e.*, what the customer took from the SRP network
10 minus what the customer added to the network).

11 54. SRP voluntarily adopted net metering, and has engaged in that program for
12 years on terms that benefitted SRP and its customers. Among other things, net metering
13 has reduced SRP’s need to purchase costly power from other sources and to make
14 investments in power generation.

15 55. SRP publicly touted the benefits of distributed solar and encouraged its
16 customers to use it. As SRP customers recently commented to SRP:

17 “You guys convinced me to go solar back when you were subsidizing the
18 installation. You also touted solar because it would reduce demand and add
19 to your generating capacity. I made a 20 year commitment and a major
 roof top change based on your recommendations!”

20 “When we decided to go with solar, I talked with different SRP people, and
21 was told that you were all for us ‘helping SRP to produce electricity’, as it
22 would help you to keep from having to pay for all the new equipment to
 provide more electricity. Now we hear that you want to penalize us for the
 decision that you helped us to make.”

23 “As a customer of yours for some 18 years now, we bought into your
24 advertising that by going solar you not only help yourselves, but you help
25 your neighbors, the environment, and SRP at the same time. We were told
26 that by going solar, we’d help reduce the drain on the system during peak
 power usage. We’d help reduce carbon emissions. We’d help SRP delay
 the spending of resources to expand the grid to deliver more power. You
 even put together incentives to drive us as customers to solar.”

1 ***SRP Begins to Change Course to Eliminate Competition***

2 56. In or around 2011, as distributed solar increased in popularity and
3 efficiency, SRP began to recognize that distributed solar could become a competitive
4 threat in the longer term.

5 57. In part as a response, SRP developed its “Community Solar” program,
6 where customers purchase solar-generated electricity. SRP pitches Community Solar as a
7 direct competitor to distributed solar.

8 58. SRP has strong financial incentives to sign customers to Community Solar.
9 Because SRP has obligated itself to buy all output from at least three large-scale and
10 privately owned solar farms, SRP has a strong financial interest in ensuring demand for
11 that electricity.

12 59. Unaccustomed to competition and perhaps believing that solar-generated
13 power had different consumer demand characteristics than traditionally-generated power,
14 SRP initially overpriced Community Solar for consumers, making it uncompetitive with
15 distributed solar, particularly as distributed solar prices rapidly declined. By December
16 2013, SRP reported that one of its solar farms was selling only 60% of its output.

17 60. In December 2013, SRP had to lower Community Solar’s pricing to meet
18 competition from SolarCity and other distributed solar providers.

19 61. This kind of pricing to demand is foreign to a monopolist. SRP manager
20 John Tucker regretfully explained the reason for the Community Solar rate drop: “It’s
21 come to the point where solar customers expect to realize some sort of savings.” In other
22 words, customers who invested in distributed solar that reduced their usage and provided
23 surplus power to the grid expected to save money on their electric bill, even while SRP
24 had reduced its incentives for installing distributed solar to zero.

25 62. Despite distributed solar’s benefits to SRP in the short- and medium-term,
26 SRP has come to recognize that, as distributed solar continues to grow, distributed solar
27 will force SRP to adapt to vigorous competition in the future—including on metrics like
28 price, service, innovation, and the ability to efficiently generate electricity.

63. As SRP's own consultant, hired to justify its SEPPs, summed it up: SRP faces "the present reality of industry transformation" due to distributed generation and energy efficiency.

SRP's Anticompetitive And Wrongful Conduct

64. In response to this growing threat, SRP committed to using its monopoly power to eliminate rooftop solar competition.

65. In December 2014, SRP announced its intent to adopt the SEPPs to apply new service terms and rates to its customers. SRP's Board of Directors approved the SEPPs, with minor changes, on February 26, 2015.

66. For customers who purchase all their electric requirements from SRP, the SEPPs follow SRP's traditional rate structure, with charges largely for per-kWh electricity usage and secondarily in the form of a fixed monthly service charge, which SRP raised from \$17 to \$20. The overall effect of the new terms and rates, according to SRP, will be an average 3.9% increase.

67. For the first time, however, the SEPPs also include rate plans that uniquely apply to self-generating residential customers who purchase both electricity from SRP when their systems are not generating power and grid access for transmission of that electricity and for the electricity generated by their systems and made available to other users. These self-generating residential customers are overwhelmingly or exclusively distributed solar customers.

68. The SEPPs, and particularly the new rate plans that apply to self-generating customers only, have the purpose and effect of eliminating future distributed solar installations. Overall, in comparison to the 3.9% increase across the full range of SRP's over 900,000 customers, the new rate plans dramatically increase (retroactively to December 8, 2014) the costs of switching to distributed solar. For example, using SRP data for what SRP describes as a "typical solar customer," the new residential plan will result in an increase of approximately **65%**—approximately **\$600 per year**, or **\$12,000 over twenty years**—for a new distributed solar customer compared to what that customer

1 would have paid under the previous rate structure that applied to self-generating
2 customers. Existing distributed solar users—already essentially lost to SRP for significant
3 portions of their electricity purchases—are “grandfathered” into the old plans.

4 69. The SEPPs’ huge fees for residential distributed solar customers, which have
5 no corresponding changes for either non-solar or Community Solar customers, include:

6 a. A “distribution charge” of either \$12.44 or \$37.88 per month,
7 depending on whether the customer has service below or above 200 amps. By
8 contrast, SRP charges non-solar and Community Solar customers a flat \$4.20 per
9 month “distribution charge.” This distribution charge is part of a discriminatory
10 monthly service charge, totaling a flat \$20 per month for all customers except self-
11 generating customers, but \$32.44 to \$57.88 per month for self-generating
12 customers.

13 b. “Demand charges” for each kilowatt of usage in the customer’s most
14 intensive 30-minute peak period each month, regardless of who generates the
15 power used during that period, such that for the “typical solar customer” profile
16 provided by SRP, the discriminatory demand charge will range from about \$30 per
17 month in the winter to around \$125 in the summer peak months. Customers
18 without distributed solar face no demand charge at all.

19 c. Substantially reduced bill credits for the power that distributed solar
20 customers send *back* into SRP’s grid for SRP to re-sell to other customers.

21 70. The only practicable way to escape the charges is to forgo installing
22 distributed solar systems or to radically reduce peak usage, both overall and for every
23 single 30-minute period of peak period usage every month. A consultant hired by SRP
24 admitted that a residential customer who wants to install distributed solar would
25 simultaneously have to cut peak electricity usage and demand by **60%** just to keep paying
26 SRP “about the same” as those payments would have been under the previous plan.

27 71. Under the SEPPs, for a residential self-generating solar customer to break
28 even after installing a distributed solar system, SolarCity would have to charge far less per

1 kWh on a retail basis than the 5.3 cents per kWh wholesale price SRP announced it will pay its largest Community Solar generator.

72. Commercial customers will pay about 2% more annually (on top of other pricing increases) as a penalty, as well as lose net metering altogether, if they use distributed solar under typical circumstances. In view of the average commercial customer's high energy consumption, that increase, including the 2% penalty, translates into more than **\$24,000** each year. As with residential customers, the SEPPs' new penalties render it impossible for commercial, municipal, and educational customers to obtain any viable return on a new distributed solar investment.

73. SRP's anticompetitive intent is clearly revealed by the fact there are no differences in usage patterns between new distributed solar customers subject to the discriminatory charges and the grandfathered existing distributed solar customers or the Community Solar customers. The only distinction is that the new distributed solar customers represent incremental losses of business to competitors, while the Community Solar customers and customers with existing solar installations do not.

74. Given the sheer magnitude of the increases for new distributed solar customers, it is clear that the purpose of the SEPPs is not to recoup reasonable grid-related costs from distributed solar customers, but to prevent competition from SolarCity (and other providers of distributed solar) by punishing customers who deal with such competitors with higher prices on the remainder of any power that those customers continue to purchase from SRP.

75. SRP knows that very few, if any, customers will make the economically irrational decision to install distributed solar systems if the result will be to pay a *higher* total amount for power. SRP has designed its price plan to make it irrational for any customer to obtain solar power from a competitor because SRP knows that every customer depends on it for some part of its power demand.

1 76. SRP does not try to hide its anticompetitive intent. In its efforts to justify
2 the SEPPs, SRP asserted that those who do not like the new, high rates on distributed solar
3 users should “take part in [SRP’s] Community Solar program.”

4 77. By making the new rate structure retroactive to December 8, 2014, SRP has
5 already seen the anticompetitive result of its new policies: SRP received about 500
6 distributed-solar applications per month from May through October 2014. Between the
7 time SRP published the SEPPs on December 12, 2014 and January 15, 2015, SRP
8 received just 20 distributed-solar applications.

9 78. The SEPPs are exclusionary because they punish customers for dealing with
10 SRP’s competitors by raising prices those customers must pay for a product (portions of
11 electricity not addressable through self-generation) and a service (access to the electrical
12 grid) over which SRP holds an unassailable monopoly position. Among other things, the
13 SEPPs are exclusive dealing contracts because they require customers who wish to obtain
14 essential power and grid access from SRP to agree to terms that preclude rational
15 customers from dealing with distributed solar competitors like SolarCity. Alternatively,
16 the SEPPs monopolize, attempt to monopolize, and unreasonably restrain trade in the
17 retail market by tying, bundling, and leveraging SRP’s monopoly power in the market for
18 grid access to foreclose competition in the retail market.

19 79. In sum, SRP has reversed a long-time course of conduct that had generated
20 customer goodwill, benefitted SRP in the short- and medium-term, and created a unique
21 combination of services that consumers enjoy (rooftop solar and electric grid
22 interconnection), for the sake of excluding longer-term competition by preventing
23 customers in its service area from installing distributed solar from competitors like
24 SolarCity.

25 80. SRP’s conduct with respect to the SEPPs was also designed to interfere with
26 and impair the obligations of SolarCity’s contracts and prospective contracts.

27 81. For example, SolarCity spent two years working with Maricopa Community
28 Colleges to implement multiple solar installations totaling over 12 megawatts in

1 capacity. According to an SRP employee, it sent “chills down the spine” of SRP
2 management when it became clear that Maricopa and SolarCity were nearing a successful
3 deal. In releasing the SEPPs on December 12, 2014, SRP established that the deadline for
4 grandfathered applications would be retroactive to December 8 (even though the pricing
5 plan would not be voted on until February 2015), knowing that doing so would eliminate
6 Maricopa’s and other commercial, municipal and educational customers’ ability to qualify
7 for the then-existing rate plan. Accordingly, even though Maricopa unanimously voted to
8 authorize an agreement with SolarCity on December 9, 2014, even before the release of
9 the proposed SEPPs, it was already too late.

10 ***Harm And Damage***

11 82. SolarCity has lost substantial past, present, and future revenues and profit as
12 a result of SRP’s anticompetitive conduct. These damages are the result of harm to
13 competition, not just to a competitor.

14 83. SRP’s rates have made rooftop solar profoundly uneconomical. Indeed, as
15 noted above, there have been nearly no new distributed solar applications in SRP territory
16 since December 12, 2014. SolarCity has identified at least 500 customers who have not
17 moved forward with SolarCity as a result of SRP’s SEPPs in just the last two months, and
18 SolarCity cannot justify continuing to offer leases or sales in SRP territory. No rooftop
19 solar company will be able to compete effectively with SRP under SRP’s punitive SEPPs.
20 This is illustrated by the near-total elimination of new distributed solar applications since
21 December 12, 2014. It is also illustrated by the comments of numerous SRP customers,
22 including for example:

23 “By adding the proposed fees, it is no longer feasible for someone like me
24 to lease a system from SolarCity and there is no way I can buy one outright
25 so you are proposing to cut an entire class of people out of being able to
have solar on their property.”

26 “I was considering installing a very small solar system to help the
27 environment a little bit by increasing the portion of my energy consumption
28 that is clean, and lower my costs a bit. By my calculations, this ridiculous
anti-environmental penalty would make me lose money each month rather
than saving money to re-coup the costs.”

1 “Seeing the new projected additional cost for homeowners with roof top
2 solar systems just made my decision to NOT go this route, which I had
3 been considering.”

4 “I’ve been so excited to get a solar system on my home I just moved into,
5 but with your new rate plan I have no incentive to go solar now.”

6 “You are taking the opportunity to eliminate the solar industry in AZ. With
7 this move you have penalized anyone thinking about solar and using it for
8 future use. Monopolies are not the norm as people look for alternative
9 energy....What would SRP do if there was another competitor on this grid?
10 Competition breeds better pricing for all.”

11 ***SRP’s Conduct Has No Legitimate Justification***

12 84. SRP has asserted false or pretextual reasons for its conduct, most of which
13 are versions of the argument that customers with distributed solar are “subsidized” by
14 customers without distributed solar because the payments distributed solar customers
15 make to SRP do not allow SRP to recover a sufficient portion of SRP’s fixed costs of
16 offering service to those customers.

17 85. The fundamental premises of SRP’s assertion are unsupportable. Rather
18 than saddling other customers with additional costs, distributed solar benefits SRP and all
19 its customers in numerous ways, including by reducing SRP’s costs of generating power,
20 distribution, and transmission. SRP’s own history of supporting, purchasing, and
21 subsidizing the purchase of solar energy shows that it recognizes the benefits to SRP and
22 its customers of solar energy in general and distributed solar in particular.

23 86. SRP’s justification also runs directly counter to the basic premise of the
24 antitrust laws. As the United States Supreme Court reminded another utility that protested
25 its antitrust liability, the law “assumes that an enterprise will protect itself against a loss by
26 operating with superior service, lower costs, and improved efficiency”—not by using its
27 market power to exclude competition by punishing customers who deal with competitors.

28 87. SRP erroneously asserts a supposed right to recover costs it chose to incur.
Pro-competitive responses to reduced demand include reducing unnecessary “fixed costs”
by innovating or operating more efficiently.

1 88. Nor is SRP undoing any “subsidy” to distributed solar customers. Instead, it
2 charges distributed solar customers more for less service, or more for the same service,
3 than other customers with the exact same usage characteristics. And it is charging
4 distributed solar customers far more than the amount of fixed costs that are attributable to
5 such customers, while continuing to charge (subject to a significantly smaller \$3 increase)
6 all other customers a small fraction of the fixed costs attributable to their use of the SRP
7 grid. As one SRP customer explained to SRP:

8 “Non-generating customers SHOULD pay more of the costs of SRP’s
9 maintenance than solar-generating customers do since they use more energy
10 than solar customers do, since they are not helping to reduce demand during
11 peak summer season, when SRP can use the help and benefits from less
12 reliance on the grid, and since they are contributing to greater
13 environmental and health costs for our population through a heavier
14 reliance on fossil fuels. This proposal makes it clear that SRP’s goal is to
discourage customers from creating their own electricity and to become the
sole provider of solar electricity by making home solar economically
unfeasible through this plan, but it is unfair to penalize those of us who
have already taken on 20-year leases to do the right thing. . . .

15 SRP says on its website that it supports solar power. What it obviously
16 means is that it supports it *only* if it supplies it. Solar generation customers
17 have taken on a financial burden for the life of their leases—many as much
18 as 20 years—to do the right thing, take pressure off the grid during peak
19 times, and create clean power to reduce pollution and other environmental
20 costs. SRP could raise rates on all customers equally, but it is proposing
21 instead to doubly burden those who have attempted to help safeguard our
future by increasing their rates far greater than they have for traditional
energy customers and ignoring the fact that many of those solar-generating
customers have already taken on additional financial burdens to reduce
stress on the electric grid.”

22 89. The SEPPs’ proposed Community Solar pricing also undermines SRP’s
23 arguments. The SEPPs’ Community Solar price structure offers some customers
24 Community Solar through a bill credit scheme that SRP says results in selling Community
25 Solar power to those customers “at cost” to SRP. However, this “at cost” system keeps
26 customers on the standard time-of-use pricing plan with no discriminatory service and
27 demand charges. Thus, SRP has no problem with its existing, non-discriminatory rate
28

1 structure so long as customers pay SRP for solar power. This fact was not lost on SRP's
2 customers, one of whom noted to SRP:

3 "[SRP's SEPP] loudly sings the praises of 'new' community-scale solar
4 which would seem to offer the same panacea as was Roof Top Solar just a
5 few short years ago. To read this section, one would be led to believe that
6 Community Solar is completely different from Roof Top Solar. The truth is
7 that, from the point of view of the Grid, they are exactly alike. All Solar
8 generation suffers from intermittency; however that intermittency is
9 strongly mitigated by spatial distribution."

10 90. In fact, there is zero or very little "subsidy" after all distributed solar's
11 benefits to SRP are appropriately considered. As another SRP customer put it:

12 "A few years ago, I sat in the PERA Club in a most upbeat presentation
13 from your staff on the great benefits of residential installations and how
14 much SRP was behind their customers who were thinking of 'going solar'.
15 What happened between then and now? How did incentives turn into
16 disincentives in such a short period of time?

17 Please don't quote the standard grid investment collapse arguments to
18 explain this. These are at best inaccurate and at worst completely
19 disingenuous. I pay for the generation, transmission, and distribution of
20 the power that I get from SRP and any excess that I generate at any
21 particular moment goes straight to my neighbors who pay YOU for it.
22 Since their meters don't know where the power is coming from, they get
23 charged for generation, transmission, and distribution for energy that
24 didn't come from the grid. Is that fair? I should also note that in addition
25 to taking the solar bait, I have replaced all my incandescent bulbs with low
26 energy alternatives (also encouraged by SRP). Should I be paying more to
27 you to cover the reduced transmission/distribution fee collection that this
28 incurs? If I turn off the lights in my daughter's room after she has left,
should I mail you a check? Ridiculous? Not if you think your residential
solar penalties are appropriate."

91. That SRP's cross subsidy claim is pretextual is demonstrated by SRP's
comfort with the large "cross subsidies" it will continue to provide when those subsidies
do not arise from solar competition. For example, SRP customers who use natural gas
appliances have less electricity demand from SRP, and any "fixed" costs attributable to
them are therefore "subsidized" by others; SRP customers with winter homes in Arizona
use far less electricity from SRP, and therefore are "subsidized" by others; SRP's existing
customers "subsidize" customers in new homes, for whom SRP has to build out new lines;

1 SRP's more rural customers, who cause SRP higher distribution and transmission costs
2 than metropolitan customers, are "subsidized" by metropolitan customers; and SRP's
3 customers who have taken steps other than installing competitive distributed solar to
4 reduce the amount of electricity they demand from the grid are "subsidized" by those who
5 consume more electricity.

6 92. In short, hundreds of thousands of SRP customers have electricity purchase
7 or demand characteristics such that they are, under SRP's logic, being "subsidized" by
8 other customers. Yet SRP's punitive new SEPPs do not apply to those customers. They
9 apply only to those customers who obtain electricity from a competitive source such as
10 distributed solar from SolarCity.

11 93. Moreover, the structure of the demand charges the SEPPs impose on
12 distributed solar customers fatally undermine SRP's stated justifications for the plan. By
13 imposing a demand charge based on the 30-minute period of highest usage at peak times
14 in any given month, SRP's demand charge merely creates the incentive to mitigate 30-
15 minute spikes in individual customer demand that do not necessarily correspond to
16 system-wide peak demand, and therefore are poorly correlated to any significant or
17 demonstrable incremental fixed costs to begin with. Such a demand charge does little to
18 affect customer behavior if the *next* largest 30-minute spike is not much smaller, as is
19 likely the case for virtually all customers. Meanwhile, by reducing the per-kWh energy
20 charge that applies to both peak usage and peak generation, the SEPPs *reduce* solar users'
21 incentives to reduce peak demand overall.

22 94. SRP has deliberately designed its demand charge to be difficult—perhaps
23 virtually impossible—to calculate, manage, know in advance, or even be likely to reduce
24 peak demand. Asked why the SEPPs do not have any analogous "demand charge" for
25 customers who do not use distributed solar, SRP's General Manager & Chief Executive
26 Officer, Mark Bonsall, summed up the anti-consumer effect of the demand charge as
27 follows:
28

1 “I guess the bottom line on that is I think it would be very difficult, were
2 she still with us, to put my grandma on a demand charge. I mean, we’re
3 gonna have people that just don’t want to do that or it’s too complicated for
4 them to understand and/or they don’t care about it. I think we need to be
5 sensitive to some of those issues as well.”

6 95. In short, SRP’s demand charge is explicitly and unapologetically
7 discriminatory. For the 98% of SRP customers who do not generate any rooftop solar
8 electricity, SRP considers it infeasible for those customers to reduce their peak demand to
9 reduce peak loads and mitigate draconian monthly bill impacts. SRP refuses to apply the
10 same reasoning to distributed solar customers. The conclusion is inescapable: SRP is
11 more interested in punishing solar than actually reducing peak demand and managing
12 SRP’s grid-related costs.

13 96. Other utilities have been unable to prove similarly pretextual subsidy claims.
14 For example, Arizona Public Service (“APS”) has a service area adjacent to SRP’s, but
15 unlike SRP, is subject to regulation. APS asserted to its regulator that a \$50 per month
16 increase on distributed solar customers would remedy a supposed cross subsidy. The
17 Commission eventually approved, on an interim basis, an approximately \$5 increase as a
18 compromise solution.

19 97. Finally, even were it the case (which it is not) that SRP’s “cost-shifting”
20 rationale had a rational basis, neither the discriminatory charges its SEPPs impose nor the
21 exclusion of competition that has already resulted are necessary or reasonable ways to
22 address it. Other price structures are readily available that non-discriminatorily charge for
23 usage and demand at the peak times SRP says are critical to controlling its supposed
24 “fixed costs” (many of which in fact have nothing to do with the relationship between
25 distributed solar customers’ usage and demand patterns).

26 98. SRP’s true message to consumers could not be clearer: Consumers who
27 want to choose an alternative technology cannot escape SRP’s grip.
28

COUNT I:
MONOPOLY MAINTENANCE
IN VIOLATION OF THE SHERMAN ANTITRUST ACT
(15 U.S.C. § 2)

99. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

100. SRP has engaged in anticompetitive conduct to maintain its monopoly power in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

101. SRP's SEPPs constitute anticompetitive conduct and unlawful monopoly maintenance in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

102. SRP possesses monopoly power in the relevant market or markets, and willfully maintains it, including through the imposition of SRP's SEPPs.

103. SRP's SEPPs have the purpose and effect of excluding competition from distributed solar, including by actually foreclosing competition in the market and preventing entry.

104. SRP's continued anticompetitive conduct and maintenance of its monopoly power through its SEPPs is not the result of superior skill, business acumen, or historic accident.

105. As a direct and foreseeable result of SRP's monopoly maintenance, SolarCity has suffered damages in an amount to be proved at trial.

106. As a direct and foreseeable result of SRP's monopoly maintenance, SolarCity continues to suffer irreparable injury for which there is no adequate remedy at law.

107. SRP's monopoly maintenance is likely to continue if not enjoined.

COUNT II:
ATTEMPTED MONOPOLIZATION
IN VIOLATION OF THE SHERMAN ANTITRUST ACT
(15 U.S.C. § 2)

108. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

109. SRP has engaged in anticompetitive conduct to attempt to monopolize in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

110. As an alternative to Count I, SRP's SEPPs constitute an unlawful attempt to monopolize in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

111. Specifically, SRP's SEPPs constitute a willful and intentional attempt to monopolize the retail market, by excluding competition from distributed solar.

112. SRP's attempt to monopolize has a dangerous probability of success.

113. As a direct and foreseeable result of SRP's attempt to monopolize, SolarCity has suffered damages in an amount to be proved at trial.

114. As a direct and foreseeable result of SRP's attempt to monopolize, SolarCity continues to suffer irreparable injury for which there is no adequate remedy at law.

115. SRP's attempt to monopolize is likely to continue if not enjoined.

**COUNT III:
UNREASONABLE RESTRAINT OF TRADE
IN VIOLATION OF THE SHERMAN ANTITRUST ACT
(15 U.S.C. § 1)**

116. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

117. SRP's SEPPs constitute agreements that unreasonably restrain trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

118. These agreements have and will continue to have anticompetitive effects. They unlawfully insulate SRP from competition and exclude distributed solar companies from the retail market, including by actually foreclosing competition in the market and preventing entry, thereby allowing SRP to raise prices, harm the competitive process, raise barriers to entry and expansion, and retard innovation.

119. These agreements are not reasonably necessary to accomplish any of SRP's purported procompetitive goals. Any procompetitive benefit is outweighed by anticompetitive harm, and there are less restrictive alternatives by which SRP could reasonably achieve any procompetitive goal.

129. As a direct and foreseeable result of SRP's willful exclusivity arrangement, SolarCity continues to suffer irreparable injury for which there is no adequate remedy at law.

130. SRP's imposition and enforcement of its exclusivity arrangement is likely to continue if not enjoined.

**COUNT V:
MONOPOLY MAINTENANCE
IN VIOLATION OF THE ARIZONA UNIFORM STATE ANTITRUST ACT
(A.R.S. § 44-1403)**

131. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

132. SRP has engaged in anticompetitive conduct to maintain its monopoly over trade or commerce within Arizona in violation of A.R.S. § 44-1403.

133. SRP's SEPPs constitute anticompetitive conduct and unlawful monopoly maintenance in violation of A.R.S. § 44-1403.

134. SRP possesses monopoly power in the relevant market or markets, and willfully maintains it, including through the imposition of SRP's SEPPs.

135. SRP's SEPPs have the purpose and effect of excluding competition from distributed solar, including by actually foreclosing competition in the market and preventing entry.

136. SRP's continued anticompetitive conduct and maintenance of its monopoly power through its SEPPs is not the result of superior skill, business acumen, or historic accident.

137. As a direct and foreseeable result of SRP's monopoly maintenance, SolarCity continues to suffer irreparable injury for which there is no adequate remedy at law.

138. SRP's monopoly maintenance is likely to continue if not enjoined.

**COUNT VI:
ATTEMPTED MONOPOLIZATION
IN VIOLATION OF THE ARIZONA UNIFORM STATE ANTITRUST ACT
(A.R.S. § 44-1403)**

139. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

140. As an alternative to Count V, SRP's SEPPs constitute an unlawful attempt to monopolize trade or commerce within Arizona in violation of A.R.S. § 44-1403.

141. Specifically, SRP's SEPPs constitute a willful and intentional attempt to monopolize the retail market, by excluding competition from distributed solar.

142. SRP's attempt to monopolize has a dangerous probability of success.

143. As a direct and foreseeable result of SRP's attempt to monopolize, SolarCity continues to suffer irreparable injury for which there is no adequate remedy at law.

144. SRP's attempt to monopolize is likely to continue if not enjoined.

**COUNT VII:
UNREASONABLE RESTRAINT OF TRADE
IN VIOLATION OF THE ARIZONA UNIFORM STATE ANTITRUST ACT
(A.R.S. § 44-1402)**

145. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

146. SRP's SEPPs constitute agreements that unreasonably restrain trade within Arizona in violation of A.R.S. § 44-1402.

147. These agreements have and will continue to have anticompetitive effects. They unlawfully insulate SRP from competition and exclude distributed solar companies from the retail market, including by actually foreclosing competition in the market and preventing entry, thereby allowing SRP to raise prices, harm the competitive process, raise barriers to entry and expansion, and retard innovation.

148. These agreements are not reasonably necessary to accomplish any of SRP's purported procompetitive goals. Any procompetitive benefit is outweighed by

1 anticompetitive harm, and there are less restrictive alternatives by which SRP could
2 reasonably achieve any procompetitive goal.

3 149. As a direct and foreseeable result of SRP's willful imposition of these
4 agreements, SolarCity continues to suffer irreparable injury for which there is no adequate
5 remedy at law.

6 150. SRP's imposition and enforcement of these agreements is likely to continue
7 if not enjoined.

8 **COUNT VIII:**
9 **INTENTIONAL INTERFERENCE WITH**
10 **PROSPECTIVE ECONOMIC ADVANTAGE**

11 151. SolarCity repeats and re-alleges the allegations contained in each and every
12 preceding paragraph of this Complaint.

13 152. SolarCity has and had an expectancy in continuing advantageous economic
14 relationships with current and prospective customers in SRP's service area, including
15 Maricopa Community Colleges and at least 500 additional specific customers who did not
16 move forward with SolarCity as a result of SRP's conduct with respect to the SEPPs'
17 design, announcement, and imposition.

18 153. SRP had knowledge of these economic relationships and intended to
19 interfere with and disrupt them by wrongfully designing, announcing, and imposing the
20 SEPPs in a way that destroyed these relationships' economic value, thereby causing
21 breaches in the relationships.

22 154. SRP's intentional interference was improper in both motive and means.

23 155. Any interests that SRP purports to advance through its intentional
24 interference are pretextual.

25 156. As a direct and foreseeable result of SRP's intentional interference,
26 SolarCity continues to suffer irreparable injury for which there is no adequate remedy at
27 law.

28 157. SRP's intentional interference is likely to continue if not enjoined.

**COUNT IX:
INTENTIONAL INTERFERENCE WITH CONTRACT**

158. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

159. In the months and weeks prior to SRP's release of its SEPPs, SolarCity entered into contractual relationships with customers in SRP's service area, including numerous 20-year leases.

160. SRP had knowledge of these contractual relationships and intended to interfere with and disrupt them by wrongfully designing, announcing, and imposing the SEPPs in a way that destroyed these relationships' economic value, thereby causing breaches in the relationships.

161. SRP's intentional interference was improper in both motive and means.

162. Any interests that SRP purports to advance through its intentional interference are pretextual.

163. SolarCity has suffered damages in an amount to be proved at trial.

164. As a direct and foreseeable result of SRP's intentional interference, SolarCity continues to suffer irreparable injury for which there is no adequate remedy at law.

165. SRP's intentional interference is likely to continue if not enjoined.

STATEMENT REGARDING SRP'S STATE LAW VIOLATIONS

166. An Arizona statute requires that entities such as SRP be served with notice of claims arising under state law before seeking damages in court.

167. Federal courts consider this statute substantive law that applies in federal court.

168. SolarCity is complying with this statute and, as soon as possible, will seek leave to amend this complaint to seek damages for SRP's state law violations.

REQUEST FOR RELIEF

169. SolarCity repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

170. With respect to its federal law claims (Counts I-IV), SolarCity requests that this Court render the following relief:

- a. Grant judgment in favor of SolarCity and against SRP;
 - b. Grant all appropriate injunctive relief;
 - c. Award SolarCity an appropriate amount in monetary damages as determined at trial, including pre- and post-judgment interest;
 - d. Award SolarCity treble damages in an amount to be proved at trial;
 - e. Award SolarCity attorneys' fees and the costs of bringing this action;
- and
- f. Grant SolarCity such other relief as is just and appropriate.

171. With respect to its state law claims (Counts V-IX), SolarCity requests that this Court render the following relief:

- a. Grant judgment in favor of SolarCity and against SRP;
 - b. Grant all appropriate injunctive relief;
 - c. Award SolarCity attorneys' fees and the costs of bringing this action;
- and
- d. Grant SolarCity such other relief as is just and appropriate.

* * *

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b), SolarCity demands a trial by jury of all of the claims asserted in this Complaint so triable.

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP

s/Richard J. Pocker

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